



Board Direction

Ref: 19.SU0131

Following a decision in principle that a grant of substitute consent could be made, the accompanying case, 19.QD0008, was sent for assessment and report. These two cases were considered together at a further Board meeting on 8th March 2017.

The Board decided to confirm its decision and to grant substitute consent in accordance with its previous determination, with minor amendments to the draft reasons, considerations and conditions, as set out below.

REASONS AND CONSIDERATIONS

In coming to its decision, the Board had regard to the following:

- (a) the provisions of the Planning and Development Acts, 2000 to 2016, and Part XA in particular,
- (b) the “Quarries and Ancillary Activities, Guidelines for Planning Authorities”, issued by the Department of the Environment, Heritage and Local Government (2004),
- (c) the policies of the planning authority as set out in the Offaly County Development Plan 2014 – 2020,
- (d) the nature and scale of the development,
- (e) the development and enforcement history of the site, including its registration under planning authority register reference number QY28, and the quarry review history of the site under EUQY028 and 19.QV0187,
- (f) the pattern of development in the area, including the separation distances to houses, the distance to the national and regional road network, and the other quarries in the vicinity,
- (g) the remedial environmental impact statement submitted with the application,
- (h) the report and the opinion of the planning authority, and the submissions on file, and the report of the Inspector.

The Board was satisfied that the information before it was adequate to undertake a remedial environmental impact assessment and a screening for appropriate assessment in respect of the development.

The Inspector had raised concerns in relation to the adequacy of the information available on file to allow an environmental impact assessment to be undertaken. The Board did not concur, and decided not to accept the Inspector's recommendation to refuse substitute consent, based on the analysis set out under the headings below, and shared the opinion of the planning authority on this matter.

In particular, the Board noted the Inspector's view in relation to the baseline studies supporting the remedial environmental impact statement. The Board acknowledged that the nature of remedial environmental impact assessment, and the preparation of a remedial environmental impact statement, relating to past activities, will result in baseline studies that are recent in origin. However, the Board was not reliant on this data alone in undertaking its assessment. The Board was satisfied that historical data was available on file in relation to the nature and scale of past operations, including the quarry registration under QY28, planning enforcement history, and the quarry review under EUQY28 and 19.QV0187. This detailed historical information on the effects of the quarry operations on the environment was not assessed by the Inspector. The Board considered that the information available, taken in its entirety, was sufficient to complete an environmental impact assessment. The Board, therefore, did not share the view of the Inspector on this matter.

In particular, the Board was entirely satisfied that the remedial environmental impact assessment fully addressed the area of the quarry also registered under QY31A in every respect, as set out in the assessment below.

Remedial Environmental Impact Assessment

The Board considered the nature, scale and location of the development, the remedial environmental impact statement, the registration, enforcement and quarry review history of the site, the submissions on file including those of Irish Water and the Health Service Executive, the report of the planning authority, and the report of the Inspector. It is considered that the remedial environmental impact statement, in conjunction with the information available on file, identifies and describes adequately the direct and indirect effects on the environment of the development that have taken place. The Board completed an environmental impact assessment in relation to the development, by itself and in cumulation with other development in the vicinity. The Board concluded that the development of the quarry did not and would not be likely to have unacceptable effects on the environment.

Human Beings

The Board is satisfied that the principal effects on human beings related to effects on residential amenity, as described under "Noise and Vibration" below. The quarry development also had a small positive effect in terms of employment, and has provided socio-economic benefit to the wider area. The Board accepted that the quarry is not within a high amenity area, and that there are no amenity attractions of significance in the area, and concluded that tourism was not and would not be affected by the development. The Board is satisfied that the quarry is at a distance from settlements, and that significant effects would not have arisen in this respect from the development of the quarry.

Cultural Heritage

The Board is satisfied that no protected structures or buildings listed on the National Inventory of Architectural Heritage are located in proximity to the quarry, and considered accordingly that no effects on architectural heritage have arisen. The nearest such sites are over 1 km away, and the quarry, which is generally heavily screened, has no material visual presence at this distance. No recorded monuments are located within the site as a whole, and neither is the quarry within the zone of archaeological influence or setting of recorded archaeological monuments. The Board noted the Archaeological and Historical Landscapes identified in the Offaly County Development Plan in this regard, and the distances to these locations. There is no evidence of any archaeological features having been removed or affected by the development. The Board is therefore satisfied that the development was not likely to have had and would not be likely to have unacceptable effects on cultural heritage.

Noise and Vibration

The Board is satisfied that no unacceptable effects are likely to have arisen in terms of noise, as a result of the development of the quarry, due to the substantial distance of over 100 m to dwellings in the vicinity, which would provide a significant mitigation of noise. In forming this view, the Board also had regard to the scale of current and previous gravel extraction operations, the results of the noise survey on file, the nature of the gravel extraction operations, whereby no drilling, blasting or rock-breaking took place. Crushing activity was limited also. In light of the absence of blasting, the Board is also satisfied that no vibration effects arose.

The Board accepts that the heavy goods vehicle traffic associated with the development would have contributed to noise and general disturbance at dwellings on local roads. However, in light of the level of vehicular traffic arising, up to 17 vehicles per day at peak operations, the Board considered that the effects arising were acceptable.

Air Quality/Dust

The Board considered that, in light of the location of the quarry 7 m below the surrounding area, and particularly in view of the separation distances to sensitive receptors, including dwellings, no unacceptable impacts were likely to have arisen or are likely to arise in relation to dust from the entirety of the quarry in respect of its past or current operations. The Board also noted the substantial remediation that has now taken place to the east of the site.

Soils and Geology

The Board adopted the assessment and conclusions of the Inspector in relation to soils and geology, in respect of the quarry as a whole.

Hydrology and Surface Water Quality

Dry operations only took place at the quarry. No washing took place. Water was not utilised in quarry operations. The quarry has no surface water connections with water courses. No pumping took place. There were no water discharges from the site. The Board therefore concluded that significant effects were not likely to have arisen, or would be likely to arise, in relation to hydrology or surface water quality as a result of the operation of the quarry in light of the poor potential for any connectivity with surface water features. The Board is satisfied that this assessment and conclusion apply to the entirety of the quarry over its entire period of operation.

Hydrogeology and Groundwater Quality

The quarry does not operate below the water table. No pumping of groundwater took place at the quarry. There were no water discharges. The Board was satisfied that hydrogeology was not affected by the development, and that no drawdown of nearby wells or water sources arose. A public mains water supply serves the area.

The Agall Spring is located approximately 200 m to the north of the quarry excavation area, having a water level of 55.4 – 56.1 mOD. The quarry is located partly within the inner protection zone for the spring, and partly within its outer protection zone. The quarry is a minimum of 3 m above the overburden water table and does not intercept it.

The potential for interaction with the Agall Spring water supply is a matter that required particular attention, and the Board is satisfied that this has been provided in the remedial environmental impact statement. A detailed analysis of hydrogeology and the potential to affect groundwater was presented in support of the application, including trial pits and the use of borehole monitoring wells on site. This data was used to determine groundwater levels across the entire quarry, including the QY31A area, and to develop a detailed conceptual model of groundwater, as illustrated in Figure 8.5 of the remedial environmental impact statement, and which was of assistance to the Board in coming to its determination. This model was not addressed by the Inspector.

The survey data indicated that the groundwater encountered below the quarry is perched at 59.5 – 61.7 mOD, and could not freely penetrate through stiff silt bands to lower levels, and is not likely to have a vertical connection to the Agall Spring groundwater source. Furthermore, the Board considered that the potential for lateral flow connectivity with surface water features in the vicinity of the spring, sufficient to transport potential pollutants, would be improbable over the distance involved. The Board noted in this regard that the overburden groundwater flow pattern in the vicinity of the quarry is indicated as broadly east-west at this location, rather than directly north to the spring. The Board concluded that there is no evidence of any material pathway for suspended solids or any other pollutant to leave the site. In this respect, the Board noted in particular the good water quality test results at PW1, and its location relative to Agall Spring as illustrated in Figure 8.5 of the remedial environmental impact statement.

The Board considered that on-site waste water may have had a potential to have resulted in localised pollution of the perched overburden water table. However, having regard to the low employee numbers and lack of material connectivity with the Agall Spring, the Board concluded that any pollution that might have arisen would have been at a low level and confined to a localised area only. This waste water treatment system has been removed.

The Board noted that the planning authority, who were the operators of the Agall Spring water supply, did not express any objection to the development on the basis of concern in relation to the Agall Spring water quality. The Board also had regard to the submission to An Bord Pleanála by the Health Service Executive on 26th May 2015, which stated that monitoring of this supply by Offaly County Council/the Health Service Executive shows the water to be of good quality. It was considered that this supported the analysis presented in the remedial environmental impact statement.

In forming its conclusions in relation to hydrogeology and groundwater quality, the Board considered that the level of site investigation was sufficiently representative of the quarry as a whole, and that, accordingly, the conceptual model facilitated a satisfactory understanding of the groundwater flow patterns in the vicinity of the quarry, including the QY31A area. The Board was satisfied that the groundwater flow patterns identified in the hydrogeological model adequately incorporated the QY31A area in light of the small scale of this area relative to the overall quarry and its proximity to the test locations, and did not share the Inspector's view in this respect.

Landscape and Visual Impact

This area is identified in the Offaly County Development Plan 2014 - 2020 as being of low landscape sensitivity with a low value rating. There are no protected views or scenic routes in proximity. The Board was satisfied that, notwithstanding the scale of development, views of the quarry are localised and generally confined to the County road approaching the site from the north east. Some houses in this area are also likely to have views of the quarry, although it is well screened on the whole. The Board also noted the reinstatement of approximately 10 ha that has been undertaken. The Board concluded that the quarry, in its entirety, did not and does not have a significant impact on the landscape or the visual amenity of the area, and shared the Inspector's views in this respect.

Flora and Fauna

The Inspector raised concerns in relation to the potential for Annex I habitat having been lost, in relation to the presence of protected flora and fauna, and the adequacy of ecology surveys.

In relation to the likelihood of loss of dry calcareous grassland, which is listed in Annex I of the EU Habitats Directive, the Board accepted the analysis of the applicant's consultant ecologist on this matter, as set out in Section 10.4.2 of the remedial environmental impact statement. The Board accepted the ecologist's conclusion that the quarry operation in the past had adverse effects due to the loss of semi-natural grassland habitats, some or much of which was likely to have been of Annex I quality. The Board decided not to refuse substitute consent for this reason.

In relation to rare flora, the Board accepted that both Red Hemp Nettle and Blue Fleabane are species of open, calcareous habitats such as quarries, neither of which can tolerate competition from taller vegetation and require regular disturbance and/or infertile soils. The Board accepted the ecologist's conclusion that the quarry has had a beneficial effect in providing an environment for rare flora to develop. The Board is satisfied that the mitigation measures proposed in Section 10.5 of the remedial environmental impact statement will ensure the ongoing protection of these rare flora species. It is considered appropriate that this be reinforced by means of condition.

It is noted that Sand Martins are frequently attracted to the habitat made available at quarries, as observed by the Inspector, as are Kestrels, and their presence has not been deterred by the past operation of the quarry. It is considered unlikely that there has been any significant adverse impact in the past in respect of these species. It is further considered that disturbance and displacement effects on fauna would have arisen at a level of local significance. The Board is also satisfied that the mitigation measures proposed in Section 10.5.4 of the remedial environmental impact statement will ensure an appropriate ongoing provision for Sand Martins.

In coming to its conclusions in relation to the likelihood of effects on habitats, flora and fauna, the Board adopted the analysis and conclusions of the applicant's consultant ecologist as set out in Section 10 of the remedial environmental impact statement. The Board concluded that unacceptable ecological effects did not result from the development of the quarry.

In forming this conclusion, the Board was wholly satisfied that ecology surveys covered the entirety of the quarry, including the QY31A area, as well as lands beyond the quarry boundary to the east, west and south. This is very clearly illustrated in Figures 10.1, 10.2 and 10.3 of the remedial environmental impact statement. The Board was satisfied that no deficiency arose in this respect, and did not share the Inspector's view on this matter.

Traffic and Transport

The Board noted that the quarry, which solely supplies the Condrón Concrete facility, is approximately 4.8 km from the N52 national road at a point east of Mucklagh village, and that quarry transport avoids school times in the village. The transport route continues on to the R421, R443, R420 and again the R441 regional roads. The Board is satisfied that national and regional roads are appropriate in terms of catering for heavy goods vehicle traffic. Although the local roads in the vicinity have limited capacity to accommodate heavy goods vehicles, it was considered that, over the relatively short distances and in light of the relatively low numbers of vehicles involved, the effects of the development would not have been unacceptable. Traffic counts set out in the environmental impact statement indicate that the quarry would have accounted for approximately 4% of traffic on the local road. The Board concurred with the Inspector's analysis in this matter.

The Board is satisfied that the analysis undertaken in respect of traffic and transport relates to the operation of the quarry in its entirety, and considered that this was the appropriate approach to take in determining effects of the development on the environment.

Cumulative Effects

In light of the assessment undertaken above, the Board was satisfied that the main cumulative effects that had or have a potential to arise relate to traffic, visual impact, and the effects of noise or dust on residential amenity.

An assessment of cumulative traffic impacts was set out in the environmental impact statement, which examined 12 quarries within 5 km. There are two quarries to the south of Blackwood, which have accesses on to the N52 national road. There are also seven smaller quarries to the west of the site, six of which take access from the same local road, which in turn connects to the R357 regional road. The Board considered that cumulative effects are likely to have resulted from heavy goods vehicles on the public road network. The Board is satisfied that this was not unacceptable in view of the proximity of the national and regional road network in this area. The Board also considered that cumulative heavy goods traffic would have also resulted in some disamenity for the occupants of dwellings on the County road leading to the R327 in terms of noise and general disturbance on a local road. The Board did not consider that substitute consent should be refused for this reason.

The Board is satisfied that cumulative visual impact is low. The quarry is well screened.

The Board considered the potential for cumulative residential impact to have arisen in relation to noise or dust, particularly to the immediate west, and was satisfied that the separation distances involved would have provided effective mitigation against such cumulative impacts.

The Board was, therefore, satisfied that no unacceptable cumulative effects did or would arise as a result of the development.

Appropriate Assessment Screening

In conducting a screening exercise for appropriate assessment, the Board considered the nature, scale and location of the development, the documentation on file generally, the registration and quarry review history of the site and the submissions on file. The Board is satisfied that there is and was no potential for effects to arise from the development in relation to European Sites, arising from the absence of connectivity with such sites and the separation distances involved. The Board, therefore, concurred with the assessment of the Inspector, and with that carried out by the planning authority under EUQY28, and was satisfied that a Stage 2 Appropriate Assessment was not required.

Conclusions on the Proper Planning and Sustainable Development of the Area

The Board is satisfied that, in itself and in conjunction with other development in the vicinity, and subject to compliance with the conditions set out below, the development did not and would not conflict with the provisions of the Offaly County Development Plan 2014 – 2020, did not and would not seriously injure the amenities of the area or of residential property in the vicinity, did not and would not result in a risk of pollution, did not affect known archaeological features or architectural heritage, and was acceptable in terms of traffic safety and convenience. It is, therefore, considered that the development was and would be in accordance with the proper planning and sustainable development of the area.

CONDITIONS

1. (a) This grant of substitute consent shall be in accordance with the plans and particulars submitted to An Bord Pleanála with the application and the further information submitted to An Bord Pleanála on 29th June 2015, except as otherwise may be required to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority within six months of the date of this order, and the development shall be in accordance with the agreed particulars.
- (b) The grant of substitute consent relates only to past quarrying that has been undertaken as described in the documentation supporting the application, and does not authorise any structures or any future development on this site, including excavation, unless authorised by a prior grant of planning permission.

Reason: In the interest of clarity.

2. All environmental mitigation measures identified in the remedial environmental impact statement and associated documentation shall be implemented in full.

Reason: In the interests of the conservation of the environment and of the amenities of the area.

3. Within six months of the date of this order, proposals shall be submitted to and agreed in writing with the planning authority for the following:
 - (i) a programme for the monitoring of groundwater levels and of ground water quality, and
 - (ii) the provision of bunding around fuel storage tanks.

Reason: In the interest of the protection of the environment.

4. Implementation-stage details of the restoration of the quarry shall be submitted to and agreed in writing with the planning authority, in accordance with the measures set out in Sections 2.2.1 and 10.5 of the remedial environmental impact statement, which details shall include the following:
 - (a) the finished gradients of the quarry faces, including their suitability for bird species,
 - (b) implementation proposals for the measures to protect rare flora,
 - (c) details of secure fencing for the boundaries of the site,
 - (d) a scheme of landscaping and tree planting, and control of invasive species,
 - (e) (c) the control of dust emissions until such time as planting is established,

- (f) implementation stage details of the mitigation measures set out in Section 10.5 of the remedial impact statement in relation to the protection of rare flora and for bird species,
- (g) proposals for an aftercare programme of five years, and
- (h) the scheduling of the works to protect bird species.

The restoration shall be completed to the written satisfaction of the planning authority within 12 months of the date of this order in accordance with the agreed details, unless a grant of permission for the further development of this site is implemented.

Reason: In the interest of protection of the environment, landscape and public safety.

5. Unless a permission for the further development of this site is implemented, the developer shall lodge with the planning authority, within six months of the date of this Order, a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory restoration of the site, coupled with an agreement empowering the planning authority to apply such security or part thereof to the satisfactory restoration of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion of the development.

6. Section 48 Unspecified

Note:

The Board noted the decision made under 19.QV0187, which set aside the determination of the planning authority under Section 261A5(a) of the Planning and Development Act, 2000, as amended, and was satisfied that the remedial environmental impact statement and associated documentation addressed this area, as illustrated throughout the document.

Board Member: _____ Date: 24th April 2017
Fionna O' Regan